Ralph K. Davies Medical Center *and* Ralph K. Davies Nurses' Association, Petitioner. Case 20-RC-14888

July 6 1981

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Kay M. Hendren of the National Labor Relations Board on September 11, 19, and 21, 1979. Following the close of the hearing, the Regional Director for Region 20 transferred this case to the Board for decision. Briefs were thereafter filed by the Employer and the Petitioner and an *amicus curiae* brief was filed on behalf of the California Hospital Association.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed. Upon the entire record in this proceeding,[1] the Board finds:

1. The parties stipulated that the Ralph K. Davies Medical Center is a California nonprofit corporation which operates an acute care hospital, extended care skilled nursing facility, acute rehabilitation facility, and medical office building at its San Francisco, California, location. During the year preceding the hearing, the Ralph K. Davies Medical Center had gross revenues in excess of $250,000 and purchased goods or services valued in excess of $50,000 directly from points located outside the State of California. Based on the above stipulation, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Employer has declined to stipulate to the status of the Petitioner as a labor organization within the meaning of the Act. Principally, the Employer argues that the Petitioner is not a labor organization because Lois Jahn, the Employer's former director of nursing and an admitted supervisor at the time of her employ by the Employer, was involved in the Petitioner's formation, and because one of the Petitioner's founding purposes was promoting the reinstatement of Jahn to her position as director of nursing.

The record establishes that the dismissal of Jahn was the original impetus for the nurses' organizational activities. In this regard, Jahn suggested to the nurses that they organize in light of the Employer's handling of her dismissal, and she was present at a few early informal sessions of the nurses concerning the issue of job security. However, while Jahn's dismissal sparked the nurses' apprehension about their own job security, the Petitioner, which evolved as a result of this apprehension, limited its objectives from the start to terms and conditions of employment of its own members including their job security and input into patient care. Jahn was never a member of the Petitioner,[2] never attended any meetings of the Petitioner, and at the time of the hearing herein was no longer seeking reemployment with the Employer. Moreover, there is no evidence that Jahn took part in the actual formation of the Petitioner.

In light of the foregoing, and the fact that it is clear from the record that the Petitioner is an organization "in which employees participate" and exists for the purpose of bargaining collectively with the Employer regarding terms and conditions of employment, we find that the Petitioner meets the definition of labor organization set forth in Section 2(5) of the Act.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The Petitioner seeks to represent a unit of all registered nurses in the department of nursing employed by the Employer at its San Francisco facility, excluding all other employees. The Employer contests the appropriateness of the petitioned-for unit. It contends that the only appropriate unit consists of all health care professionals at the medical center. Such a unit of professionals would consist of recreational therapists, dietitians, occupational therapists, physical therapists, social workers, pharmacists, medical technologists, librarians, audiologists, speech pathologists, and registered nurses, including those in the utilization review department.[3]

The Employer operates three facilities at its San Francisco, California, location: a 250-bed acute care facility, a 55-bed extended care skilled nursing facility, and a 77-bed acute rehabilitation center. The Employer employs approximately 930 employees at the three facilities. Some of the Employer's employees are currently covered by collective-bargaining agreements.[4]

[1] The Employer has filed a request for oral argument before the Board. The request is hereby denied since the record and briefs adequately present all issues and contentions of the parties.

[2] Supervisors are specifically excluded from membership in the Petitioner.

[3] Neither party seeks to include staff medical doctors in the unit.

[4] Local 250 of the Hospital and Institutional Workers' Union, AFL-CIO, represents approximately 280 nonprofessional employees in the housekeeping, dietary, laundry, and nursing departments. Local 39 of the Stationary Engineers' Union represents approximately 15 employees who are stationary engineers handling the boilerroom and maintenance repair.

Continued

The Employer has two vice presidents—one in charge of finance and one in charge of administration. Under the vice president in charge of finance is the director of personnel, the controller, and the manager of business services. The latter is responsible, *inter alia*, for the utilization review coordinators and the social workers, the only professionals under the vice president in charge of finance that the Employer seeks to have included in the unit. All of the other professionals whom the Employer seeks to include in the unit report ultimately to the other vice president.

Many of the Employer's personnel policies are administered by the director of personnel. Requisitions for new employees are initiated by individual department heads and then approved by one of the vice presidents. The personnel department then does the recruiting for all positions and conducts the initial interview with all applicants. After checking the applicant's references, the personnel department refers him or her to the appropriate department. The department heads make the actual decision about whether an individual will be hired.

Individual department heads initiate disciplinary actions and discharges but must obtain clearance from the personnel department before implementing them. Grievances may be filed either with supervisors or directly with the personnel director and the personnel department monitors the administration of the grievance procedure. The personnel department also monitors the 90-day probationary period for all employees by notifying each department when the probationary evaluations are due for different employees. The personnel director reviews the evaluations but apparently has not overruled any department recommendation. All classifications of employees with the exception of medical doctors and those covered by collective-bargaining agreements enjoy the same insurance benefits and vacation and sick leave accrual rate.

The nursing department is headed by the director of nursing who reports directly to the vice president in charge of administration. Under the director of nursing are several associate directors and one assistant director.[5] Individual supervisors of the different nursing units such as critical care, rehabilitation, and hemodialysis report to one of three associate directors. The nursing unit supervisors supervise licensed vocational nurses, nursing attendants, ward clerks, and some technicians as well as registered nurses.[6]

The other hospital professionals are each subject to their own separate intradepartmental supervision.[7] Physical therapy, occupational therapy, speech and hearing, and the library all constitute distinct departments under the director of community services who reports directly to the vice president in charge of administration. The laboratory, pharmacy, and department of dietary services, like the department of nursing, are directly accountable to the vice president in charge of administration.

All of the professionals in the hospital are required to have significant, specialized training in their respective fields. For example, the registered occupational therapists must have 4 years of formalized training. Additionally, they must complete a 6- to 9-month clinical affiliation. Thus, the chief occupational therapist testified that a nurse who wished to become an occupational therapist would have to go through the entire training program.[8]

In light of the highly specialized training of the different professionals, it is not surprising that there is no permanent interchange between the registered nurses and the other professionals in the hospital. The only significant functional interchange is in the realm of rehabilitative care. In this regard, registered nurses must be generally aware of a patient's therapy program in order not to undermine that program in the course of the patient's care. Thus, when a therapist is unavailable, registered nurses may have to assist patients to execute functions such as eating or dressing themselves that they mastered in therapy sessions. However, by virtue of their distinct training and certification, registered nurses are necessarily limited in the therapy they can provide.

A pilot project in the rehabilitation facility called the A.M. Activities of Daily Living Program (AMADL) requires that the registered nurses work side by side with the therapists each morning, but the program apparently does not require overlap of functions. The AMADL team consists of an occupational therapist, a physical therapist, and nursing staff who work together on a group of four to five

and one carpenter. Approximately seven or eight cooks are represented by Local 2 of the Hotel, Motel and Culinary Workers. The parties stipulated that these bargaining relationships have existed at least 20 years. Additionally, Local No. 4 of the Painters' Union represents two painters employed by the Employer.

[5] The assistant director of nursing is responsible for supervision on the evening shift.

[6] Of the 500 employees under the director of nursing, only 200 employees are registered nurses. Licensed vocational nurses, surgical, orthopedic, and psychiatric technicians, physical therapy, surgical and central supply aides, and nursing attendants are all represented by Local 250 of the Hospital and Institutional Workers' Union.

[7] The isolated exception to this rule might be the renal dietician in the hemodialysis center who is evaluated by the supervisor of the center who is in the nursing department.

[8] The 4 years of formal training of occupational therapists consist of 2 years of combined science and liberal arts, and 2 years specialized study in occupational therapy. It is not stated in the record whether a registered nurse might be given credit for any general science and liberal arts background she possesses.

patients in the same room each morning. The occupational therapist prepares the patients so they can eat and dress. The registered nurse takes vital signs, gives medications, and catheterizes patients where necessary. The physical therapist, *inter alia*, gives passive muscle exercises and stretching exercises, and assists patients with limited mobility to transfer from one place to another, e.g., "bed to a wheelchair."

Considerable testimony was presented regarding the degree of contact between registered nurses and the other professional classifications. The nature and extent of such contact varies greatly depending on the classification, the department, and the facility in question. Registered nurses have only negligible direct contact with librarians and speech and hearing therapists. Contact with some of the other classifications is sporadic and perfunctory except on the irregular occasions when one will refer problems to the other. For example, dieticians make daily rounds of the hospital wards. Thus, some coincidental contact between dieticians and registered nurses is inevitable. Additionally, the dieticians may check with a registered nurse if a problem arises with a patient's diet. Similarly, the pharmacists may make rounds to discuss new drugs with the registered nurses, and registered nurses may call the pharmacy on occasion for information about a particular drug. Regarding the laboratory, registered nurses will place a doctor's order for laboratory work into a computer which prints out in the laboratory. However, the registered nurse does not necessarily take laboratory specimens to the laboratory herself, but often sends them with a messenger or other staff. Some blood is drawn in the nursing units, but only 25 percent of that is drawn by the technologists, and the rest by nonprofessional blood drawing teams. Thus, while there is some contact between registered nurses and laboratory technologists, it is intermittent and largely superficial. Similarly, while registered nurses and medical doctors may make referrals to the social service staff, and registered nurses and social workers may alert each other to problems that arise, such contact is not on a sustained basis.

With the exception of the AMADL program in the rehabilitation facility referred to above[9] the registered nurse's contact with physical and occupational therapists is also relatively sporadic. Much of the therapy work is done in the respective therapy departments. Patients are generally transported there by messenger. The occupational therapist does more therapy in the nursing units than the physical therapist but that amounts to only 8 percent of the occupational therapist's work. It appears that at one point the occupational therapy department set up a satellite gym in order to perform some therapy in the nursing unit, but use of the satellite gym for this purpose has been discontinued. A registered nurse may suggest to a doctor that a certain type of therapy is warranted, but registered nurses alone may not direct that therapy be given.

It is significant that despite the overall centralization and uniformity of general personnel practices concerning the hospital's professionals, certain exceptions have been made for nurses. For example, the personnel department has a special nurse recruiter. Additionally, while pay adjustments for all employees not covered by collective-bargaining agreements occurs after their first 6 months on the job and thereafter once each year, registered nurses are evaluated at the first of the year and, during their first 4 years with the Employer, on their anniversary dates.[10] Similarly, while registered nurses who have been employed by the Employer for at least 6 months and who give 2 weeks notice of termination are paid, *pro rata*, for vacation leave accrued, all other employees must have worked for the Employer for at least 1 year before being eligible to receive such a *pro rata* payment.

Like other departments, the nursing department has its own practice and procedures manual. This document sets forth in great detail the nature and limitations of the duties of the nursing staff. In particular, it emphasizes the registered nurses' unique role as overall coordinator of patient care and their responsibility for seeing that the doctors' orders are carried out. Further, there is a special program of in-service education for nurses. Other professionals are permitted to attend the presentations and people from other departments in the hospital sometimes teach the courses. However, only registered nurses and licensed vocational nurses are required by the State to take these courses, and none of the other employees get credit towards state requirements for taking them.

We note also that the Hospital is unable to bill separately for nursing services, although it can and does provide separate bills for the services of some other professionals. (Nursing services are included

[9] At the time of the hearing herein there were 25 registered nurses in the rehabilitation facility. In the skilled nursing facility, the nursing staff conducts a 3-hour meeting once each week during which it reviews the status of patients in the facility and receives input from the other professionals, including therapists, on individual patients. Similar "team conferences" are held in the rehabilitation facility. These meetings are for the purpose of exchanging information and do not mean that these professionals thereafter work side by side in caring for the patients.

[10] The difference in timing of the evaluations is due to the Hospital's efforts to remain competitive with registered nurse salaries in the community. Apparently, nearly all the other hospital facilities in the San Francisco Bay area have salary adjustments for nurses on the first day of the year.

within the daily room charges.) Thus, the budget computation method used in the nursing department necessarily differs from that used in other departments. Additionally, due to the unique size and the considerably varied activities and functions of the nursing department, it alone among the departments is divided into subunits for budgeting purposes.

With regard to bargaining history, the parties stipulated that since at least 1964 substantially all the members of the Associated Hospitals of the East Bay and the Affiliated Hospitals of San Francisco have had collective-bargaining agreements with the California Nurses Association of bargaining units limited to registered nurses. The Employer is not a member of either organization.

Based on the above facts, for the reasons described below, we find that the registered nurse unit sought by the Petitioner is an appropriate one for collective bargaining.

In *Newton-Wellesley Hospital*, 250 NLRB 409 (1980), the Board recently reexamined the appropriateness of separate registered nurses' units in light of the congressional admonition against proliferation of bargaining units in the health care industry and the decision of the Ninth Circuit Court of Appeals in *N.L.R.B.* v. *St. Francis Hospital of Lynwood*, 601 F.2d 404 (9th Cir. 1979). The Board held, *inter alia*, that while a separate unit of registered nurses is not *per se* appropriate, it may be appropriate under certain circumstances such as those set forth herein. The Board has subsequently found in cases involving similar facts that other separate registered nurses units are appropriate,[11] but has not hesitated to find otherwise when the facts require such a result.[12]

As the Employer contends, there are aspects of its operation which would support the broader unit it seeks. Thus, the Employer has many centralized personnel policies and consequently registered nurses share many terms and conditions of employment with other professionals in the Hospital. Additionally, the registered nurses share some similarity of background and working conditions with the other professionals simply by virtue of the fact that they are all professionals involved in the provision of health care in a hospital facility. Further, the registered nurses have at least some contact with all the other professionals in the Hospital.

Despite the characteristics shared by the registered nurses with other professionals, the registered nurses here have a community of interest so distinct that it permits their placement in a separate unit. Thus, their pivotal role in monitoring each patient's overall care and in seeing that the doctor's orders with regard to each patient are executed may afford them some contact with other professionals, but it also distinguishes them in a crucial way from these professionals. Registered nurses alone have close and continuous 24-hour-a-day direct contact with the patients for whom they perform an extensive variety of services. Thus, while some of the other professionals such as the therapists may make daily visits to some of the patients, their contacts with the patients are considerably less frequent and of a much more specialized nature. This central role of the nurse in patient care is reflected in the inclusion of the registered nurses services in the daily room charge rather than as a separate billing item.

All of the registered nurses share a common educational background, licensing, and unique skills and so generally have job interchangeability and daily functional interaction. In contrast, there is no permanent interchange and little functional interchange between registered nurses and other professionals. And, while the registered nurses have varying degrees of contact with the other professionals, such contact is rarely more than routine and intermittent. Admittedly, as part of their role of monitoring a patient's care, registered nurses exchange information with other professionals, but there appear to be few, if any, close and continuous interprofessional relationships.[13]

The above factors coupled with the separate supervison of the registered nurses and their distinct budgetary treatment indicate that the registered nurses here are much like the nurses in *Newton-Wellesley Hospital, supra*, in which a separate registered nurses unit was found appropriate. We note additionally, as we did in *Newton-Wellesley*, that while unit size alone is not a determinative factor, it is one to be considered in light of the congressional concern with proliferation of units in the health care field. Thus, we note that the registered nurses here are by far the largest group of professionals in the hospital and constitute more than one fifth of the Employer's total employee complement. Accordingly, since Board precedent would not afford separate representation to any other group of professionals in the circumstances here,[14] granting a separate unit to the registered nurses here

[11] See, e.g., *Addition-Gilbert Hospital*, 253 NLRB 1010 (1981), and *Frederick Memorial Hospital, Inc.*, 254 NLRB 36 (1981).

[12] See, e.g., *Mount Airy Foundation d/b/a Mount Airy Psychiatric Center*, 253 NLRB 1003 (1981).

[13] The Employer contends that it has adopted a "team" approach in the skilled nursing and rehabilitation facilities. However, although these team conferences afford more contact among the professionals, there is still little functional interchange and the registered nurses pivotal role remains unique.

[14] *Newton-Wellesley, supra*, 414, 415.

will result in a maximum of two units of professionals, both of substantial size.

Finally, we note that separate units of registered nurses is not inconsistent with the pattern of representation in the San Francisco Bay area. That this factor is one of some significance is manifest in the distinct treatment afforded registered nurses by the Employer regarding pay adjustments undertaken and specially timed to remain competitive with similar treatment given registered nurses at other hospitals in the community.

Based on the foregoing, we find that a separate unit of registered nurses is appropriate. Contrary to the wishes of the Employer, however, for the reasons set forth below we would not include the utilization review coordinators in the unit found appropriate.

The utilization review coordinators are the only registered nurses not working in the nursing department. While the director of nursing reports to the vice president in charge of administration, the utilization review coordinators are under the manager of business services who in turn reports to the vice president in charge of finance. More importantly, the utilization review coordinators are not involved with direct patient care. Rather, they perform the purely administrative function of determining the most effective and efficient use of the Hospital's facilities by monitoring patient care, primarily through patient records, to assess whether it falls within government and insurance company guidelines. Although the position requires a knowledge of medical terminology and health care generally, the coordinators do not make medical decisions regarding a patient's treatment. Indeed, in the past, the position has been filled by an individual without a nursing degree. Accordingly, we conclude that the utilization review coordinators do not share a sufficient community of interest with the registered nurses and we shall exclude them from the unit herein.[15]

Upon the entire record in this proceeding, we find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All regular full-time and part-time nurses in the department of nursing employed by the Employer at its San Francisco facility excluding all office clerical, managerial employees, guards and supervisors as defined in the Act, and all other employees.

[Direction of Election and *Excelsior* footnote omitted from publication.]

[15] See *Addison-Gilbert Hospital, supra.*